

# PARK COUNTY AND PROSECUTING ATTORNEY

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April 14, 2022

**Prosecution review of January 16<sup>th</sup>, 2022 Officer Involved Shooting, DCI Case  
Number # 2022-00053**

This case was assigned to the Park County Attorney's Office, via a Campbell County Commissioner Resolution.

On January 16<sup>th</sup>, 2022 at 7:25 a.m., Gillette Police Department dispatched two of their officers to a domestic disturbance at 500 Church Ave. #22. There was information obtained through dispatch that an individual who was a guest of some local residents was upset and screaming at those same residents.

Gillette Police Department Officer Patrick Totzke and Sergeant Jason Marcus were still at their morning briefing when the call came in. Based on the nature of the dispatch information received, Officer Totzke retrieved a pepper ball gun that fires balls filled with pepper spray. He is trained and certified in its use and it is meant to be deployed in situations calling for less than lethal force to gain compliance with combative suspects. Both officers left the police department and responded to the scene in separate vehicles. While en route, dispatch updated the officers with additional information noting the boyfriend of the reporting person was trying to get the suspect to leave and also that the suspect was on probation for being under the influence of a controlled substance.

Within minutes, both officers arrived on scene and staged a short distance away. Officer Totzke had the pepper ball gun over his shoulder as they approached the residence. An individual, standing near the opened front door of unit #22, made eye contact with the officers and quickly retreated inside the residence where the

officers believed other residents were still present. The officers could hear a woman yelling from inside the residence to "just leave my house."

Officer Totzke was the first to enter the residence followed by Sgt. Marcus. They immediately made contact with the suspect, Ismael Trinidad Montes, who had a large machete styled knife in his right hand. He told Officer Totzke to "just shoot me." Officer Totzke holstered his weapon and shouldered the pepper gun.

Officers were at this point issuing commands for the suspect to drop the knife that he still had in his right hand. The suspect was not complying with the commands and was making erratic movements and was incoherent. After several failed attempts to get the suspect to drop the knife, both officers deployed their less than lethal devices. The suspect was hit with the tazer and multiple pepper balls which had no effect on him. The suspect retreated down a hallway to a bathroom where he shut the door behind him.

Moments later, the suspect opened and closed the bathroom door several times while yelling at the officers. Both officers were continued commanding the suspect to drop the knife. After several seconds of this interaction, the suspect came out of the bathroom with the knife in hand and quickly advanced on the officers who were in a very confined hallway. Both officers immediately began backing away from the suspect. Sergeant Marcus tripped, causing him to lose his balance and fall, leaving him in a very vulnerable position. The suspect rapidly closed in on Sgt. Marcus with his knife in a striking position resulting in physical contact. Officer Totzke then drew his duty weapon and fired several rounds into the suspect causing him to drop the knife. However, the suspect was able to retreat.

Unfortunately, the suspect's retreat was only momentary. He returned and picked up the knife and charged at the officers. Both officers fired until the threat was subdued. During this second advance, the suspect was able to strike Sergeant Marcus at least two times, one on his head which caused immediate bleeding and a second strike to his groin area that only left a mark on his uniform.

Toxicology reports on the deceased indicated the presence of methamphetamine, amphetamine, THC and metabolites of cocaine.

## **ANALYSIS**

The purpose of this review is to determine if the officers involved in this incident violated any Wyoming laws. It is undisputed that an individual was killed by the police officers. The next step is to determine if the shooting was justified under the law.

Pursuant to Wyoming law, if the officers had reasonable grounds to believe and actually did believe that they were in imminent danger of death or serious bodily harm and could be saved only by using deadly force, then the officers had the right to use such deadly force.

After attempts to disarm the suspect with less than lethal force, the officers were justified in their use of deadly force to defend themselves when the suspect charged at them in the very narrow hallway with a large machete type knife in-hand. The officers reasonably believed they were in immediate danger and were thereby justified in using deadly force. The body camera footage tells the story.

No criminal charges are warranted against either officer and this was clearly a justified shooting.



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